

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ARDIS WRIGHT, ET AL.

§

§

v.

§

Case No. 2:15-CV-279-RSP

§

CITY OF MARSHALL TEXAS

§

MEMORANDUM ORDER

Currently before the Court are the motions in limine carried at the Pretrial Conference for further briefing.

Motions in Limine Nos. 1 and 2 by Plaintiffs concern federal income tax returns filed by Plaintiff Jennifer Carpenter in 2012 and 2013. Those returns claim a farm loss deduction that Plaintiff maintains would be unduly prejudicial if discussed before the jury. The Court finds that the tax returns are relevant due to the Plaintiff's claim for lost wages, and are not collateral matters. Accordingly, to the extent that Plaintiff contends they are not accurate statements of her income, they are relevant to her credibility. Accordingly, as long as a wage loss claim is asserted, the motions in limine are DENIED.

Motions in Limine 3 and 22 by Plaintiffs concern retirement benefits and whether Defendant is entitled to offset them against the wage loss claimed by Plaintiffs. The Court finds that any retirement benefits received from the City of Marshall (or to which the City contributed) may be offered by Defendant as mitigation of Plaintiffs' wage loss claims. *E.g., Smith v. Office of Personnel Management*, 778 F.2d 258, 263 (5th Cir. 1985). However, any retirement benefits received by Plaintiffs on account of work for other employers than the City may not be presented to the jury as mitigation.

Finally, the Plaintiffs' Supplemental Memorandum (Dkt. No. 73) complains of portions of the expert report of James Davis, CPA, in which Davis opines that certain actions by Plaintiffs caused Plaintiffs to no longer qualify as properly mitigating their damages. While the expert may testify as to relevant facts of which he has knowledge, he will not be permitted to offer any opinion as to the adequacy, intent or motivation of Plaintiffs' efforts to mitigate their losses.

SIGNED this 15th day of March, 2016.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE